

No. 14-1371 TP

We held a hearing on December 1, 2014. Taylor appeared in person and by counsel David F. Barrett. Assistant Attorney General Nichole Bock represented the Office. The matter became ready for our decision on December 15, 2014, the date the transcript was filed.

Findings of Fact

1. Taylor graduated from high school in Wichita, Kansas, and attended vocational training there to become a machinist.
2. After high school, Taylor was employed as a machinist in various shops before getting hired at Boeing Aircraft, where he worked until moving to Colorado. While employed at Boeing Aircraft, Taylor was also trained in heating and air conditioning.
3. Taylor also attended truck driving school, obtained a commercial license, and was engaged in that profession for a period of time.
4. Taylor was married in April 1989. He and his wife had two children. On February 21, 2000, they were divorced.
5. After Taylor's divorce, he and his ex-wife continued to see each other. They lived next door to one another, dated, and discussed reconciliation.
6. On the night of June 30 - July 1, 2000, Taylor went to a bar with his ex-wife. He saw her talking to another male patron whom he thought she had dated.
7. Taylor, who had been drinking, became enraged. He began to fight with the man and his friends. The bouncer ejected them and the fight continued outside. Taylor brandished a knife, and the man and his friends drove away.
8. Taylor and his ex-wife pursued them in his car. He repeatedly asked her where the man lived and brandished his knife toward her as well. He threatened to kill her, too. She wanted to go home, but he refused to take her home.
9. While driving her around in the vehicle, Taylor hit his ex-wife repeatedly in the face and the legs.
10. Once back at Taylor's apartment, he repeatedly sexually assaulted his ex-wife and kept her at the apartment against her will overnight.

11. The next morning, Taylor ordered her out of his apartment.
12. Later that day, Taylor's ex-wife went to the police station and reported that Taylor had sexually assaulted her. She was transported to the hospital for a rape examination, which revealed an abrasion to her anus.
13. Taylor was arrested and charged. He pled not guilty because he did not think he had committed any crime against his ex-wife. In his view, his violence had been directed toward the man he fought with.
14. Taylor was tried and convicted by a jury in El Paso County, Colorado, for the following offenses under Colorado Revised Statutes (C.R.S.)(1999), all in connection with his actions toward his ex-wife on the night in question: second-degree kidnapping with sex assault (C.R.S. 18-3-302(1)); sex assault by physical force (C.R.S. 18-3-402(1)(a)); menacing (C.R.S. 18-3-206); and assault 3 (C.R.S. 18-3-204).
15. On March 19, 2001, Taylor was sentenced to various periods of incarceration for the above offenses, the longest of which was 15 years to life.
16. While in prison, Taylor successfully completed sex offender therapy.
17. Taylor believes that "alcohol myopia" contributed to his distorted view of events on the evening of June 30 – July 1, 2000. The sex offender treatment he underwent in prison changed his view of those events. He has a new understanding of what may qualify as violence and coercion.
18. Taylor was paroled on April 16, 2013. When he was released from prison, the Colorado State Board of Parole evaluated whether he should be designated as a sexually violent predator and whether grounds existed to require community notification of his release. The parole board found grounds for neither.

19. Taylor is on parole for 20 years, although he can petition for a reduction after ten years. He is also on the sex offender registry for the State of Missouri. He updates his registry information with the sheriff every 90 days.

20. Taylor initially saw his parole officer twice a month, but she reduced the frequency to once a month. He goes to group therapy once every two weeks. He has been sober since 2007.

21. Upon his release, Taylor moved to Missouri, where he has extended family. Initially, he worked on their farm.

22. Taylor has completed training in bloodborne pathogen control, first aid, and cardiopulmonary resuscitation. He has also completed an apprenticeship that included at least 350 documented hours of practical experience. He submitted evidence that he completed these requirements for licensure to the Office with his application.

23. Taylor did his apprenticeship tattooing in St. Joseph. His mentor found Taylor's equipment was sterile and organized, and that he was well acquainted with the regulations of the profession.

24. The City of St. Joseph licensed Taylor as a tattooist on February 10, 2014.

25. With family assistance, Taylor bought and renovated a small building in Fairfax, Missouri, where he does airbrushing and custom car painting. He wishes to engage in tattooing in that location also.

26. Taylor has community support in Fairfax for his new business. He has worked with the Atchison County Economic Development Office for coaching and support in establishing his business.

Conclusions of Law

We have jurisdiction to hear Taylor's complaint. Sections 324.523.1 and 621.045.¹

Taylor has the initial burden to show that he is qualified for licensure under the laws and administrative regulations relating to this profession. Section 621.120, RSMo 2000. He made that showing, and the Office does not contest his qualifications.

Thus, the Office must show that it has cause to deny Taylor's application.² The degree of proof is a preponderance of the evidence, which is "evidence which as a whole shows the fact to be proved to be more probable than not." *Kerwin v. Missouri Dental Board*, 375 S.W.3d 219, 230, quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D., 2000). If the Office carries that burden, we then make the decision whether to grant the application *de novo*, exercising the discretion originally granted to the Office. *See State Bd. of Registration for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012).

When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984). This Commission must assess the credibility of witnesses, and we are free to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D. 2001). We found Taylor's testimony to be credible.

¹ Statutory citations are to the RSMo Supp. 2013 unless otherwise indicated.

² The statutory scheme for licensing makes it clear that an applicant must demonstrate that he is qualified for a license. Section 621.120. An agency that seeks to impose discipline upon a licensee bears the burden to demonstrate cause for that discipline. *See Missouri Real Estate Commission v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989); *Kerwin v. Missouri Dental Board*, 375 S.W.3d 219, 230. Section 324.038, which allows a licensing board to issue a probated license if the licensing agency has cause to deny the license application, explicitly allocates the burden of proof to demonstrate the basis for imposing probation to the licensing agency. We conclude, based on these authorities, that in a case such as this one, if the applicant meets his burden to show he is qualified for the license, the burden to demonstrate the basis for a refusal on discretionary grounds then shifts to the licensing agency. *See Nichols v. Missouri State Board of Pharmacy*, No. 90-0018 PH (August 2, 1990) (Spinden, C.).

I. Cause for Denial

The Office argues there is cause to deny Taylor's application under § 324.523.1(2), which states:

1. The division may refuse to issue or cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required under sections 324.520 to 324.526, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(2) Final adjudication and finding of guilt, or the entrance of a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession that is licensed or regulated under sections 324.520 to 324.526, and the regulations promulgated thereunder, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Subdivision (2) – the nature of Taylor's offenses

Taylor was tried and convicted of several criminal offenses in the state of Colorado. Under the licensing statute, we must address whether those offenses are reasonably related to the qualifications, functions, or duties of the profession of tattooing, whether any of the offenses carried an essential element of fraud, dishonesty, or violence, or any involved moral turpitude.

Taylor was convicted of second-degree kidnapping under C.R.S. §18-3-302(1), which states:

(1) Any person who knowingly seizes and carries any person from one place to another, without his consent and without justification, commits second degree kidnapping.

* * *

(3) Second degree kidnapping by any person under subsection (1) or (2) of this section is a class 2 felony if the person kidnapped:

(a) Is a victim of a sexual assault[.]

Taylor was convicted of sexual assault in the first degree (physical force) under C.R.S. §18-3-402(1)(a), which states:

(1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits a sexual assault in the first degree if:

(a) The actor causes the submission of the victim through the actual application of physical force of physical violence[.]

Taylor was convicted of class 5 felony menacing under C.R.S. §18-3-206, which states:

A person commits the crime of menacing if, by any threat or physical action, he knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a class 3 misdemeanor, but, if committed by the use of a deadly weapon, it is a class 5 felony.

Finally, Taylor was convicted of assault in the third degree under C.R.S. §18-3-204, which states:

A person commits the crime of assault in the third degree if he knowingly or recklessly causes bodily injury to another person or with criminal negligence he causes bodily injury to another person by means of a deadly weapon. Assault in the third degree is a class 1 misdemeanor.

*Reasonable relation to the qualifications,
functions and duties of a tattooist*

Reasonable relation is a low threshold. To relate is to show or establish a logical or causal connection. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1916 (unabr. 1986). "Reasonable" means "being or remaining within the bounds of reason: not extreme: not excessive;" and "not conflicting with reason: not absurd: not ridiculous." *Id.* at 1892. We conclude that for a criminal offense to be reasonably related to the functions, qualifications or duties of a profession, the relationship between the offense and the profession must be logical and not strained or exceedingly tenuous. The Office argues that Taylor's criminal offenses were reasonably related to the profession of tattooing because customers must be able to trust the tattooist who is performing work on their bodies.

We agree that the crimes of assault and sexual assault are reasonably related to the profession of tattooing. A tattoo is “an indelible mark made on the body of another person by the insertion of a pigment under the skin” or “an indelible design made on the body of another person by production of scars other than by branding.” Section 324.520.1(5); 20 CSR 2267-1.010. Regulations governing the practice of tattooing in Missouri acknowledge that tattoos can be applied all over the body, including the genital area. 20 CSR 2267-3.010(2)(F) (requiring a privacy panel or other barrier to be used during tattooing of the genital area, to separate patron from view of observers or other patrons).

A tattooist occupies a position of trust with his patrons, inasmuch they are in a vulnerable position during a procedure. To perform his job, a tattooist must have close physical contact with the patron. Because tattooing involves such intimate physical contact, we conclude that assault – sexual or otherwise – is reasonably related to the functions of the profession.

Essential element of an act of violence

An essential element is one that must be proven for a conviction in every case. *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961). The Office argues that violence is an essential element of Taylor’s criminal offenses. In general, we agree.

Violence is the “exertion of any physical force so as to injure or abuse[.]” WEBSTER’S at 2554. Menacing, as defined by C.R.S. §18-3-206, does not necessarily involve an act of violence. With that exception, however, each of Taylor’s crimes has one or more acts of violence as an essential element.

Offenses involving moral turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”

In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

We normally analyze criminal offenses under a framework set forth in *Brehe v. Missouri Dep’t of Elementary and Secondary Education*, 213 S.W.3d 720 (Mo. App. W.D. 2007), a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude. That framework, which discusses three classifications of crimes, can be helpful in analyzing whether a crime is one of moral turpitude, particularly when there are circumstantial considerations. We see no need to engage in such a detailed analysis in this case. Taylor’s actions toward his ex-wife on the night in question were base, vile, and depraved. We determine that Taylor’s crimes involved moral turpitude.

Summary of Cause

There is cause to deny Taylor’s application for licensure under § 324.523.1(2) because he was found guilty after a criminal prosecution under the laws of Colorado of offenses reasonably related to the functions and duties of the profession of tattooing, offenses of which violence is an essential element, and offenses of moral turpitude.

II. Exercise of Discretion

Section 324.523.1 provides that the Office “may” deny a license to Taylor upon a finding of cause for discipline. “Use of the word ‘may’ in a statute implies alternate possibilities and that the conferee of the power has discretion in the exercise of the power.” *McAlister v.*

Strohmeier, 395 S.W.3d 546, 552 (Mo.App. W.D., 2013), quoting *State ex rel. Nixon v. Boone*, 927 S.W.2d 892, 897 (Mo.App. W.D., 1996). Under the facts of this case, therefore, we may deny Taylor’s application for a tattooist license, but we are not required to do so. Taylor’s appeal vests in this Commission the same degree of discretion as the Office, but we need not exercise it in the same way. *Trueblood*, 368 S.W.3d at 267.

In exercising our discretion, we are guided by several considerations. First, we are mindful that the purpose of the professional licensing laws is to protect the public. *Garozzo v. Missouri Dept. of Ins., Financial Institutions & Professional Regis’n*, 389 S.W.3d 660, 665 (Mo. banc 2013). At the same time, the General Assembly, through its enactment of § 314.200, RSMo 2000, and § 324.029, has established a public policy allowing felons the opportunity to show sufficient rehabilitation for occupational and professional licensing. Section 324.029 provides: “Except as otherwise specifically provided by law, no license for any occupation or profession shall be denied solely on the grounds that an applicant has been previously convicted of a felony.” And § 314.200, although not directly applicable in this case, specifically directs state agencies to “consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant’s character” when considering the moral character of an applicant who has been convicted of a felony or misdemeanor.

The appellate courts of this state have also issued a number of decisions consistent with the principle that persons who have committed crimes may show sufficient rehabilitation to be licensed. *See, e.g., Trueblood; State Bd. of Regis’n for the Healing Arts v. Finch*, 514 S.W.2d 608 (Mo. App. W.D., 1974); *State Bd. of Regis’n for the Healing Arts v. DeVore*, 517 S.W.2d 480 (Mo. App. W.D., 1974).

With these countervailing principles in mind, we consider Taylor's application. As we do so, we note that the statutes governing the licensing of tattooists, unlike most other licensing statutes, do not require the applicant to show that he has good moral character. We confine our inquiry, therefore, to whether Taylor has shown, despite his criminal history, that he can be a safe, hygienic, and law-abiding tattoo practitioner.

The un rebutted evidence is that Taylor practiced tattooing during his apprenticeship in a safe and hygienic manner. His mentor testified that his equipment was sterile and organized. There was no contrary evidence. The preponderance of the evidence indicates he will practice tattooing hygienically.

The more significant question, given Taylor's past, is whether he is rehabilitated to the point that we can be confident he will practice tattooing in a safe and law-abiding manner. We have already determined that the crimes Taylor committed were violent, involved moral turpitude, and bore some relation to the profession of tattooing. Now we also consider the fact that they were committed on one night, with one victim, nearly fifteen years ago. Although the crimes were abhorrent, we do not necessarily see them as an indication that he is a threat to others – a finding also made by the Colorado parole board, inasmuch as it found he was not a sexually violent predator, and that no community notification was needed in connection with his release.

Taylor has been out of prison since April 2013. While this is not a long time, it is similar to the timeline in *Finch*, a case in which a doctor who had murdered his wife was ultimately granted a license to practice medicine in Missouri. Finch was convicted of his crime in 1961. He was paroled in 1971, and applied for his Missouri medical license in November 1972. The court noted, at the time of its decision, "Dr. Finch's crimes, which the Board would emphasize to the exclusion of everything else, occurred 15 years ago and his conviction was 13 years ago."

514 S.W.2d at 616. Likewise, Taylor's crime was committed nearly 15 years ago, his conviction was 13 years ago, and he has been out of prison nearly two years.

Since Taylor's release from prison, he has actively worked to better himself and become a productive member of his community. He trained as a tattooist and became licensed as one by the City of St. Joseph. He borrowed money to start a small business and is working with the local community and an economic development agency to make sure he starts and conducts his business properly. He has the support of the local community and economic development agency. He has demonstrated a strong desire and willingness to learn and follow regulations in his training to become a tattooist, his efforts to develop a small business, and his pursuit of licensure as a tattooist. We believe, based on this evidence, that Taylor will abide by the law.

Most importantly, we believe that Taylor now has a better understanding of violence and why his behavior on the night of June 30 – July 1, 2000 was both violent and criminal. His judgment that night was clouded by alcohol, and he no longer drinks, having been sober since 2007. He continues to attend counseling and see his parole officer. The preponderance of the evidence indicates that he is sufficiently rehabilitated to be a safe, hygienic, and law-abiding tattoo artist, and a productive member of his community.

Summary

There is cause to deny Taylor's application for licensure under § 324.523.1(2). Because the preponderance of the evidence indicates he will be a safe, hygienic, and law-abiding tattoo practitioner, we exercise our discretion to grant his application.

SO ORDERED on January 23, 2015.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner